No. 16-1140

IN THE

Supreme Court of the United States

NATIONAL INSTITUTE OF FAMILY AND LIFE ADVOCATES, D/B/A NIFLA, ET AL.,

Petitioners,

v.

XAVIER BECERRA, ATTORNEY GENERAL, ET AL.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF TWENTY-THREE ILLINOIS PREGNANCY CARE CENTERS AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Whether compelling nonprofit, pro-life pregnancy centers to disseminate state prescribed information concerning abortion—a procedure they oppose as a matter of conscience and do not offer—violates the Free Speech Clause of the First Amendment.

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INTEREST OF *AMICI CURIAE*[1]

The twenty three *amici curiae* joining in this brief are all nonprofit, pro-life pregnancy centers in Illinois. Like the Petitioners, these centers have been targeted by a viewpoint discriminatory state law designed to force them to promote abortion—a procedure they oppose as a matter of conscience and do not offer. Unlike the Petitioners, however, all health care personnel and health care facilities in Illinois (including the *amici*) are currently protected by an unreported preliminary injunction order issued by the United States District Court for the Northern District of Illinois in *National Institute of Family and Life Advocates ("NIFLA") v. Rauner*, No. 16-C-50310 (N.D. Ill. July 19, 2017).

Because the Illinois district court's injunction is based on this Court's well-established Free Speech principles, principles which were largely disregarded by the Ninth Circuit in Petitioner's case, the *amici* have a significant interest in this Court's reaffirmation of those principles and reversal of the Ninth Circuit's decision.

The names, charitable purposes and services of the twenty three *amici* are set forth below (an asterisk marks centers which are NIFLA members):

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[1] Rule 37 statement: All parties received notice of *amici*'s intent to file this brief and consented. No counsel for any party authored this brief in whole or in part, and no person or entity other than *amici*, their counsel, and the One Nation Under God Foundation (an Illinois nonprofit entity not associated with either party) funded its preparation or submission.

Abigail Women's Center* has, since 1996, served approximately 350-400 women a year in the Mendota, Illinois area. The center's mission is to empower individuals to make healthy choices related to sexuality and childbearing, consistent with the sanctity of human life. The center provides free and confidential services, education counsel, support, and encouragement from a Biblical point of view. Services offered include the provision of free pregnancy tests, limited obstetric ultrasounds, Earn While You Learn ("EWYL") classes, pre- and post-abortion counseling, adoption referrals, and material goods such as diapers, wipes, baby food, formula, and clothing for infants, toddlers, and mothers. https://www.abigailwomensclinic.com/

CareNet Pregnancy Services of DuPage County, Inc.* has been in operation since 1981 and serves about 1,000 women a year. The center's mission is to honor and glorify Jesus Christ, the author and creator of life, by bringing His love and compassion to anyone impacted by an unplanned pregnancy. CareNet seeks to prevent unplanned pregnancies and to provide emotional support, spiritual counsel and practical help to anyone dealing with the effects of an unplanned pregnancy. CareNet provides pregnancy tests, ultrasounds, pregnancy information and options consultations, community resource referrals, parenting assistance, spiritual counsel, and abortion recovery services—all services are provided free of charge.
http://carenetdupage.com/

Crisis Pregnancy Center of Eastern Illinois*, operating as **Choices Pregnancy & Health** with locations in Charleston, Mattoon, Paris and Casey, Illinois, has operated since 1985 and serves approximately 350-400 women a year. It is a Christ-centered ministry that acknowledges the absolute worth of all human life and exists to provide accurate information, compassionate care, and practical assistance to those affected by a possible unplanned pregnancy and related issues. The free services offered include pregnancy testing, pregnancy verification for WIC and Medicaid, limited obstetric ultrasounds, pregnancy and fetal development information, education on abortion procedures, side effects and risks. Services also include providing a list of local physicians for prenatal care and other community services, peer-counseling and emotional support, childbirth and prenatal education, parenting and life skills instruction, material items for mother and baby, adoption and foster care information, and post-abortion support counseling for women and couples.
http://choices4pregnancy.com/

Fox Valley Pregnancy Center, Inc.*, operating as **Corbella Clinic** in South Elgin, Illinois, was founded in 1988 and serves over 2,000 men, women and children a year. Its mission is to love the next generation into life by offering positive, hopeful, life-affirming medical services, education and supportive relationships to women and couples experiencing an unexpected pregnancy. The clinic's free services include pregnancy testing, pregnancy verification, ultrasounds, STI/STD testing and treatment, medical and options counseling, prenatal and parenting

education/mentoring, sexual health education, material assistance to expectant mothers, adoption information, and post-abortion healing support. https://www.corbellaclinic.org/

Family Life Center* has been operating in Effingham, Illinois since 1994 and is committed to respecting every woman's privacy, rights, and worth as a person. The center is committed to providing women with the best evidence-based educational material available on pregnancy, prenatal development, the methods and risks of abortion, parenting, relationships, and other family-related topics. The center offers free pregnancy tests, limited obstetric ultrasounds, parenting skills classes, adoption information and referrals, and post-abortion support. The center also provides practical assistance, referrals for medical and social services, baby furniture, and maternity and baby clothing. http://www.familylifepcc.org/how-we-can-help

First Step Women's Center*, formerly known as Lifetime Pregnancy Help Center, has been operating in Springfield, Illinois for nine years and serves approximately 200 women a year. The center's mission is to be the first step for women facing an unplanned pregnancy, to transform their fear into confidence, and to empower them to make healthy life-affirming decisions. The medical services they provide include pregnancy testing, limited ultrasounds, STD testing and treatment, options consultation, and community referrals. http://firststepwomenscenter.org/

The Freeport Pregnancy Center has been operating since 1991 in Freeport, Illinois and serves about 270 women year. It exists to share the good news of Jesus Christ, to provide practical and emotional assistance to teens, women, and men involved in an unplanned or crisis pregnancy. Some of the services offered at the center include limited obstetric ultrasounds, EWYL, pregnancy, parenting, and life skills classes, car seat programs, and bible studies.
http://freeportpregnancycenter.org/

Gianna's House – Pregnancy Resource Center, Inc.* was established in 2005 as a non-medical, pregnancy resource center in Rock Falls, Illinois that provides emotional, spiritual, and practical assistance to pregnant women in making pro-life choices. Gianna's House also freely provides expectant and parenting mothers with diapers, wipes, infant and toddler clothing, and other baby items essential to caring for a child.

Hope Life Center*, also operating as **White Oak Women's Center**, is located in Sterling, Illinois and has provided nonprofit pregnancy support services since 1986. In 2016, it served 167 women. Its mission is to erase abortion from Illinois through effectively serving pregnant and at risk women by transforming their fear of the unknown into confidence in becoming mothers as they honor Jesus Christ. Hope Life Center offers pregnancy options consultations which include pregnancy testing, limited obstetric ultrasound imaging, and STI testing and treatment.
www.whiteoakwomenscenter.com
www.hlcil.org

Hope Pregnancy Center of Livingston County* of Pontiac, Illinois has been operating for more than thirty-one years and served about seventy women in 2017. Its mission is to serve women as ministers of Jesus Christ and advocates for the unborn. The center endeavors to meet the physical and spiritual needs of area families facing challenging life issues and to empower them to choose life by offering them alternatives to abortion. The center freely provides a mentoring program, options counseling, post-abortion support, pregnancy testing, and STD/STI information.
www.pontiachopepc.com

Life Network of Southern Illinois* in Waterloo, Illinois was founded in 1993 with a Christ-centered mission that is committed to upholding the sanctity of human life. The Life Network serves approximately 800-900 women a year. The Life Network's purpose is to provide women with accurate and complete information about prenatal development and abortion. The Life Network provides all its services for free with the goal of helping anyone that finds themselves in difficult life circumstances related to pregnancy. The Life Network also provides women the tools and resources needed to maintain a healthy pregnancy and to provide a safe and healthy environment as their children grow. The medical services it provides include pregnancy testing, limited first trimester ultrasounds, limited STD testing and treatment, options counseling, adoption education, EWYL, childbirth, newborn care and breastfeeding classes, baby resources, a fathers mentoring program, and an abortion recovery program. All medical services are

provided for free under the direction of the Network's licensed medical director and are administered by trained registered nurses.
https://www.mylifenet.org/

Living Alternatives - Pregnancy Resource Center, Inc.*, also operating as **Pregnancy Resource Center** and **Merci's Refuge** has been operating across Central Illinois since 1985 and served about 1,800 women in 2017. Living Alternatives is committed to saving the lives of unborn children by promoting life-affirming options and providing practical assistance while sharing the gospel of Jesus Christ in word and deed, and to minister restoration to those who have been wounded by the trauma of abortion. The center provides free pregnancy testing, ultrasound services, options counseling, mentoring and parenting education programs, adoption support, post-abortion support, STI/STD information, STI testing for chlamydia and gonorrhea, abstinence education, a bereavement program for women facing adverse or fatal diagnoses for their baby, and a residential program (Merci's Refuge). All of the center's services are offered in the context of spiritual growth and development for those who are interested.
http://hopeforafuture.com/

New Life Pregnancy Center*, formerly operating as the **Decatur Crisis Pregnancy Center**, was founded in 1986 and serves about 400 women a year in the Decatur, Illinois area. The center is a Christ-centered ministry committed to upholding the sanctity of human life by demonstrating the love of Christ to those facing unplanned pregnancies

through the provision of spiritual, physical and emotional support and by proclaiming the Gospel. The center provides reliable pregnancy testing with immediate results, confidential pregnancy consultations for women and couples, information on pregnancy options (excluding abortion), referrals for medical services (excluding abortion services), prenatal care, childbirth classes, adoption and financial aid, and a 24 hour help-line. The medical services provided by the center include ultrasound imaging and pregnancy consultation with a qualified physician, STI testing and treatment. The center also offers professional counseling, adoption support, support for women who have miscarried, post abortion trauma peer counseling, parenting life skills and Bible discussion classes, mentoring for mothers and fathers, sexual risk avoidance programs for junior high and senior high school students, and an onsite boutique stocked with items for children newborn to six years old.
http://www.newlifepregnancycenter.com/

Options Now*, formerly Arms of Love Crisis Pregnancy Center and Arms of Love Pregnancy Resource Center, has been operating for twenty five years. The center served about 340 women in the last fiscal year. It provides free pregnancy tests, STD screenings, ultrasounds, pregnancy options education, Christ-centered spiritual care, post-abortion support, adoption referrals, and parenting resources referrals to women in the Godfrey, Illinois area.
http://www.optionsrightnow.com/

Pregnancy Aid-South Suburbs Inc. (PASS) Network for Life* was established in 1983 to assist and empower the greater Chicagoland South suburban communities to reduce or remove the desire for abortion by providing a network of valuable, practical, and confidential care based on four pillars of ministry: prevention (abstinence education); intervention (PASS pregnancy care center; education (abundant life/living well program); and restoration (offering hope and healing). The PASS pregnancy center has served approximately 1400 women and 136 men by providing pregnancy testing and verification, prenatal care referrals, peer advocacy, social service agency referrals, pregnancy and parenting education, baby supplies, discipleship programs, sexual risk avoidance education, and post abortion/trauma recovery groups.
https://passnetworkforlife.org/

Pregnancy Matters* of Carbondale, Illinois has been operating since 1980 and is dedicated to educating, empowering, and encouraging individuals to make healthy choices about their pregnancy and their relationships. It serves approximately 800 women per year. It offers free pregnancy tests, limited obstetric ultrasounds, pre-natal vitamins, pregnancy and parenting classes, and baby and maternity items.
https://pregnancymatters.org/

Pregnancy Resource Center, Inc. of Rushville, Illinois was founded in 1991 and seeks to affirm the value of life by offering men and women alternatives to abortion through compassionate Christ-centered care from the time women suspect pregnancy until

their child enters pre-school. The center strives to build families that can raise healthy children. In addition to free pregnancy tests and obstetrical ultrasounds, the center offers EWYL, parenting and fatherhood classes, as well as material assistance such as diapers, formula, clothing and bedding for families with immediate needs. The center offers an education program teaching parents about healthy pregnancy, prenatal development, and parenting skills. While participating in the program, mothers can earn baby and maternity supplies including diapers, car seats, cribs and much more. http://www.mypregnancyoptions.com/

Relevant Pregnancy Options Center, formerly known as **Crisis Pregnancy Care Center, Inc.** and **Pregnancy Care Center of Highland, Inc.**, has provided options, support, and education to individuals facing an unplanned pregnancy and other vital services since 1994. The center serves approximately 150 men and women a year in the Highland, Illinois area. Its mission is to equip individuals to make informed decisions through compassionate Christ-centered care. The mission is accomplished by giving clients complete, accurate information on all their options, providing a safe, non-judgmental environment, collaborating with local businesses and schools to meet needs (including but not limited to material goods and medical services like ultrasound imaging), and offering ongoing support and education after a decision has been made. The center's services include visits with a client advocate or peer educator.
http://www.relevantoptions.org/

Southside Pregnancy Center, Inc.* located in Oak Lawn, Illinois, has been operating since 1984 years and serves approximately 1,200 men and women a year. The center strengthens families by offering hope and help to those with unplanned pregnancies. The medical services provided include pregnancy testing, limited obstetrical ultrasounds, reproductive health education and pregnancy options information. The family resources provided include maternity and baby supplies, educational classes (including prenatal, Lamaze/childbirth preparation, parenting, life skills, and new dad classes), family and relationship discussion groups, and post-abortion emotional and spiritual support groups.
http://www.southsidepregnancy.org/
https://www.friendsofsouthside.org/

Spoon River Pregnancy Resource Center* of Canton, Illinois has been operating since 2005 and serves approximately 150 women a year. The center provides pregnancy testing, ultrasounds to women who are up to sixteen weeks pregnant, pregnancy and parenting educational classes, and sexual risk avoidance classes in high schools. The center freely provides diapers, baby clothes and other material resources for mothers with infants and toddlers. It also provides fatherhood classes in the local prison using curriculum–"24:7 Dad"–published by the National Fatherhood Initiative.
https://www.spoonriverpregnancycenter.com/

Waterleaf Women's Center* of Aurora, Illinois has been operating since 2009 and serves about 800 women a year. Its mission is to be the chosen destination for women facing an unplanned

pregnancy and to transform their fear into confidence by addressing their physical, spiritual and emotional needs, and by equipping them to make healthy life-affirming decisions. The center provides free pregnancy tests, limited obstetric ultrasounds, STD testing and treatment, material assistance to expectant mothers, and post-abortive counseling. http://www.waterleafwc.org/

We Care Pregnancy Clinic* was founded in 1992 and serves about 500 women a year in the DeKalb, Illinois area. It strives to empower women to make life-affirming choices. It offers free pregnancy testing, ultrasounds to confirm the tests, STI testing and treatment. It also offers nonmedical services including education about all pregnancy options, pregnancy and parenting education, material and other support for mothers and their babies. http://www.wecarepregnancycenter.org/

Women's Care Clinic*, established in 1992 as Help Ministries, Inc., exists to give hope, engage support, promote life-saving options, and share God's plan with moms, dads and babies in Vermillion County, Illinois. On average the clinic serves 450 women a year. It offers free pregnancy tests, ultrasounds, pre-natal education, birthing preparation, breastfeeding education and support, group fellowship, mentoring for fathers, options counseling, post-abortion support, material assistance, community agency and adoption referrals. http://danvillewcc.org/

SUMMARY OF THE ARGUMENT

A woman has a right to choose life for her unborn child. *Roe v. Wade*, 410 U.S. 113, 153 (1973); *see also The Life Ctr., Inc. v. City of Elgin*, 993 F. Supp. 2d 863, 871 (N.D. Ill. 2013) (enjoining a municipal ordinance which inhibited women's access to a pregnancy center's free services as unduly burdensome of "the right of a woman to choose life"). Since *Roe*, pro-life citizens have organized thousands of pregnancy centers like the Petitioners and *amici* to help women exercise their right to choose life and reject abortion by proclaiming the clear message that God loves every woman and child, including those in *utero*,[2] and that He can bring about great good even from the most difficult and unexpected of pregnancies.[3]

Under the Free Speech Clause of the First Amendment, pro-life pregnancy centers cannot be required to agree with or compelled to promote the state's message concerning abortion as a condition of exercising their right to offer charitable services and proclaim an exclusively pro-life message to those in need. And women should not have their ability to receive free pregnancy support and their right to choose life for their child unduly burdened by state efforts to commandeer the mission and message of these centers.

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[2] *John* 3:16; *Luke* 1:41-44.

[3] The value of women and children in crisis pregnancies is a central theme in the Bible. Even the genealogy of Jesus the Messiah in *Matthew* 1:1-16 honors five women—Tamar (*Genesis* 38), Rahab (*Joshua* 2 and 6), Ruth (*Ruth*), Bathsheba (*2 Samuel* 11-12), and Mary—who overcame great obstacles to give birth.

ARGUMENT

I. Pro-life Pregnancy Centers Cannot Be Required to Promote the State's Position on Abortion as a Condition of Exercising Their Right to Offer Free Pregnancy Services and Proclaim an Exclusively Pro-Life Message.

Petitioners' opening brief on the merits more than adequately covers how the California Reproductive FACT Act violates the protections set forth in the Free Speech Clause of the First Amendment. It demonstrates how the Petitioners, like *amici*, are engaged in noncommercial advocacy which is entitled to the fullest protections of the First Amendment. Pet. Brief at p. 40. It also demonstrates how the FACT Act compels speech in a viewpoint discriminatory way in violation of well-established Free Speech principles. *Id.* at 31.

This brief will focus on how failing to reinforce First Amendment protections in Petitioners' case will have a devastating effect on charitable efforts to serve women, particularly those in Illinois—where courts have preliminarily enjoined a recent state law which conditions statutory health care right of conscience protections on compliance with the State's mandate that conscientious objectors to abortion must nevertheless inform women about the "benefits" of abortion and where they can be had. Not only does Illinois's law require *amici* and other conscientious objectors to provide information about abortion providers, they must parrot the state legislature's opinion that abortion has "benefits" even

though *amici* believe that abortion has no benefits and results in the loss of innocent life.

A. Pregnancy centers like the Petitioners and *amici* were organized not only as a charitable effort to meet the needs of pregnant women but also as an effort to promote a clearly articulable and exclusively pro-life message.

As the mission statements of the Petitioners and *amici* make plain, these centers are nearly all religious, nonprofit organizations that exist to provide women with free pregnancy services and information so as to help them choose to give birth and care for their child rather than have an abortion. Their viewpoint and clearly articulable message is succinctly and exclusively pro-life: God loves every woman, man, and child, including those *in utero*, and abortion is harmful and immoral.

These centers communicate their message in both word and deed. Ultrasounds have become one of the most powerful media for the pro-life message. An ultrasound provides parents a window into the womb to reveal their preborn child. If a picture is worth a thousand words, a live ultrasound image of your baby is worth a million. As Laurence Tribe writes,

> Many [people], who can readily envision the woman and her body, who cry out for her right to control her destiny, barely envision the fetus within that woman and do not imagine as real the life it might have been allowed to lead. For them, the life of the fetus becomes an invisible abstraction.

LAURENCE TRIBE, ABORTION: THE CLASH OF ABSOLUTES 5 (Norton 1980). No pro-life pamphlet can communicate the pro-life message and render the invisible visible like an ultrasound.

As argued more fully in Petitioners' brief, these centers have a right to speak or not to speak on the very public issue of abortion under the First Amendment. *Wooley v. Maynard*, 430 U.S. 705, 714 (1977) (recognizing the right not to speak as equally protected as the freedom to speak under the First Amendment); *Riley v. National Fed'n of the Blind of N.C., Inc.*, 487 U.S. 781, 796-97 (1988) (holding that the Free Speech Clause protects the freedom "of both what to say and what not to say.")

They also have a fundamental right to control the content of their message. *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Boston*, 515 U.S. 557, 572-573 (1995). This Court recognized in *Riley* that the content of a speaker's message is "necessarily alter[ed]" when the state "[m]andat[es] speech that [the] speaker would not otherwise make." 487 U.S. at 795. If, as in *Hurley*, a nonprofit parade organizer has a First Amendment right to refuse inclusion of an off-message gay pride float regardless of whether the parade has a "narrow, succinctly articulable message," *id.* at 569, how much more so does a nonprofit pregnancy center committed to a narrow, succinctly articulable pro-life/anti-abortion message have a right to refuse to include and publish the state's pro-abortion messaging.

If the Ninth Circuit's overbroad[4] definition of "professional speech" is upheld and the Free Speech rights of nonprofit pregnancy centers disregarded, a state in which euthanasia is legal could compel nonprofit anti-euthanasia centers—which exist solely to help men and women who struggle with suicidal thoughts choose life and not death—to post information on the availability of state-subsidized euthanasia programs and the "benefits" of assisted suicide as a "legal treatment option."

B. Rather than respect rights of conscience and allow room for opposing viewpoints on abortion, California, like Illinois, is targeting centers like Petitioners and *amici* because of their conscientious objections to abortion.

Following *Roe* in 1973, many states moved to enact health care right of conscience protections.[5] States recognized that if women were to have a constitutional right to abortion, the thousands of health care professionals who have ethical and conscientious objections to abortion must have the right to refuse to participate in any way in the provision of abortion related services. In 1977, Illinois enacted what some called the "gold standard" of conscience protection laws.[6] The Illinois Health Care Right of Conscience Act (IHRCA), states that

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[4] The Cato Institute's amicus brief in support of Petitioners filed on December 26, 2017 addresses the dangerous overbreadth of the Ninth Circuit's definition of "professional speech."

[5] Francis J. Manion, *Protecting Conscience Through Litigation: Lessons Learned in the Land of Blagojevich*, 24 REGENT U. L. REV. 369, 370-72 (2012).

[6] *Id.* at 372.

"people and organizations hold different beliefs about whether certain health care services are morally acceptable," and that no one should "be civilly or criminally liable by reason of his or her refusal to perform, assist, counsel, suggest, recommend, refer or participate in any way in any particular form of health care service which is contrary to the conscience of such" provider. 745 Ill. COMP. STAT. 70/4. The purpose of the law was "to respect and protect the right of conscience of all persons who refuse to . . . act contrary to their conscience or conscientious convictions . . .." *Id.*at § 70/2.

Forty years later, Illinois, like California, determined that conscientious objectors to abortion were no longer deserving of this level of respect or state protection. Instead, Illinois turned the shield into a sword by including the following compelled speech components in the amended IHCRCA:

- *Id.* at § 70/6.1 now provides that it is the "Duty of ... health care personnel [with conscientious objections]" to "inform his or her patient of the patient's ... legal treatment options...and benefits of the treatment options..."

- § 6.1 also imposes an affirmative obligation on health care providers with conscientious objections to develop protocols to ensure that women are informed of all their legal treatment options for their pregnancy and the benefits of each option, including abortion.

- § 6.1 requires providers that do not provide abortions as a matter of conscience to, at a

> minimum, inform women in writing "about other health care providers who they reasonably believe may offer" abortions.

By amending IHRCA to impose these requirements, Illinois, like California decided to impose compelled speech requirements on those who were opposed to providing abortion related services but nevertheless wished to freely serve pregnant women in other ways.

Petitioners' brief at p. 2 covers how the FACT Act targets only centers that "discourage abortion.'" *Amici* point out that Illinois did the same thing by using IHRCA to target pro-life centers and force them to engage in speech and action (referral) contrary to their pro-life principles. Because the California and Illinois share this essential feature, i.e. singling-out pro-life centers in order to force them to carry a pro-abortion message, the *amici* wish only to highlight why the United States District Court of Northern Illinois was right to follow this Court's decisions in *Reed v. Town of Gilbert*, 135 S. Ct. 2218 (2015) and *Matal v. Tam*, 137 S. Ct. 1744, 1750 (2017) rather than the Ninth Circuit's decision (which refused to apply those cases) when it preliminarily enjoined Illinois from enforcing the recent amendment to the IHCRCA.

Unlike the Ninth Circuit which contravened *Reed* and *Tam* when it refused to apply strict scrutiny to the FACT Act despite Respondents' admission that the purpose of the law is to target "crisis pregnancy centers" because of their viewpoint that "discourag[es]" abortion, the Illinois district court

found *Reed* and *Tam* to be dispositive of the level of scrutiny required of the viewpoint discriminatory, compelled speech requirements of the amended IHCRA. The Illinois district court read *Reed* and *Tam* to require strict scrutiny[7] of a viewpoint discriminatory law—even in the context of commercial speech as in *Tam* and certainly in the context of the non-commercial speech of *amici*.

The viewpoint discrimination is particularly egregious under both the California and Illinois statutes. While crisis pregnancy centers are required to provide information on topics such as the "benefits" of abortions and where to obtain them, abortion clinics are not required to provide information on pregnancy centers and the benefits of not having an abortion and the life of the child.

Ultimately, the state of Illinois was enjoined from enforcing its law because it could not answer a fundamental question—why has it targeted only conscientious objectors as those who must disseminate the State's message concerning the availability or benefits of abortion? The same question and lack of a constitutionally permissible answer haunts and dooms the FACT Act.[8]

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[7] Viewpoint discrimination is actually never permissible. *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 642 (1943); *Rosenberger v. Rector and Visitors of University of Virginia*, 515 U.S. 819, 835 (1995).

[8] IHCRCA fails even as a content based regulation and as a violation of the unconstitutional conditions doctrine. *Rumsfeld v. Forum for Academic & Institutional Rights, Inc.*, 547 U.S. 47, 59-60 (2006) (holding that the government may not force a citizen to choose between free speech and a state benefit).

II. Women Should Not Have Their Ability to Receive Free Pregnancy Support and Their Right to Choose Life For Their Child Unduly Burdened By State Efforts to Commandeer the Mission and Message of Pro-Life Pregnancy Centers.

Far too many women are left to face their pregnancies alone, afraid, and without the information and resources they need to care for themselves and their child. A pregnancy, especially an unexpected one, can be a life-defining crisis fraught with uncertainty and laden with far-reaching consequences. From decades of experience, the *amici* have learned that providing information about alternatives to abortion, offering a free pregnancy test or ultrasound, access to parenting classes, baby clothes, and a kind word or prayer can mean all the difference in the world to an expectant mother, a fearful father, and their unborn child.

To uphold the FACT Act in the face of such well-established Free Speech principles as the prohibitions against compelled speech and viewpoint discrimination would allow states to impose a pro-abortion litmus test on those who seek to assist pregnant women with free pregnancy support services. By limiting the pool of available pregnancy centers to those few that would be willing to promote abortion, California and Illinois are not only violating the autonomy that these centers are constitutionally entitled to have over their own speech, they are also unjustifiably putting thousands of women at risk of losing access to the free pregnancy support and services these centers, in

furtherance of their religious and moral convictions, have long provided. The twenty three *amici* alone help roughly 14,000 women a year in Illinois, and a single center like CareNet distributes an estimated $400,000 in free goods and pregnancy services each year. Thus, California and Illinois seek not only to put their thumb on the scales of our public debate concerning abortion by compelling pregnancy centers' speech, they also, in doing so, deprive women and children of desperately needed services and support.

CONCLUSION

The judgment of the Ninth Circuit should be reversed.

Respectfully submitted,

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